

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 96-2057

John Sam Aslakson,	*	
	*	
Appellant,	*	
	*	Appeal from the United States
v.	*	District Court for the
	*	District of Minnesota.
United States of America,	*	
	*	[UNPUBLISHED]
Appellee.	*	

Submitted: March 4, 1997

Filed: March 7, 1997

Before BOWMAN, WOLLMAN, and BEAM, Circuit Judges.

PER CURIAM.

John Sam Aslakson pleaded guilty to conspiring to possess marijuana with intent to distribute, and using and carrying a firearm during and in relation to a drug trafficking crime, in violation of 21 U.S.C. §§ 841(a)(1), 846, and 18 U.S.C. § 924(c)(1). The section 924(c) conviction was based on a .25 caliber handgun hidden in Aslakson's boot during a drug sale. On direct appeal, Aslakson argued only for a downward departure; we affirmed his sentence. See United States v. Aslakson, 982 F.2d 283 (8th Cir. 1992) (per curiam), cert. denied, 507 U.S. 1041 (1993). Aslakson later filed this 28 U.S.C. § 2255 motion, arguing that his section 924(c) conviction was invalid under Bailey v. United

States, 116 S. Ct. 501 (1995). The district court¹ denied relief, and Aslakson appeals.

Upon a de novo review of the record, we conclude Aslakson is not entitled to relief. See United States v. Duke, 50 F.3d 571, 576 (8th Cir.) (standard of review), cert. denied, 116 S. Ct. 224 (1995). Aslakson waived and defaulted his Bailey claim by pleading guilty and appealing only his sentence. See Bousley v. Brooks, 97 F.3d 284, 287 (8th Cir. 1996). Moreover, his claim is without merit because he clearly carried a firearm during a drug offense. See Bailey, 116 S. Ct. at 507 (firearm carried when offender keeps gun hidden in clothing throughout drug transaction); United States v. White, 81 F.3d 80, 83 (8th Cir. 1996) ("carry" means to bear firearm on or about one's person).

Accordingly, we affirm. Aslakson's motion for release is denied.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The Honorable David S. Doty, United States District Judge for the District of Minnesota.